

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CARLOS JOHN WILLIAMS,

Plaintiff,

v.

WASHINGTON STATE, et al.,

Defendants.

CASE NO. C07-5216BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 32). The Court has considered the Report and Recommendation, Plaintiff's objections (Dkt. 39), and the remainder of the file and hereby adopts the Report and Recommendation for the reasons stated herein.

I. BACKGROUND AND DISCUSSION

On February 21, 2008, the Honorable Karen L. Strombom filed a Report and Recommendation recommending dismissal of Plaintiff's claims for failure to exhaust all administrative remedies. Dkt. 32. Plaintiff objects to the Report and Recommendation on several grounds.

First, Plaintiff objects to the Report and Recommendation's reliance on the declaration of Devon Schram, contending that the declaration constitutes perjury. Dkt. 39

1 at 1. While it is clear that Plaintiff disagrees with the contents of the declaration and the
2 Report and Recommendation's citation thereto, Plaintiff fails to controvert the contents of
3 the declaration.

4 Second, Plaintiff objects to the Report and Recommendation's analysis of
5 Plaintiff's unmarked grievance form. Similarly, Plaintiff disputes whether he was asked to
6 provide additional information or rewrite his grievance but failed to do so. Dkt. 39 at 1-2.
7 As the Report and Recommendation notes, the grievance coordinator's response section
8 on grievance number 0709954 was written ("Mail directly to WCC") and did not include
9 checkmarks in the boxes next to various grounds for return of the complaint. *See* Dkt. 32
10 at 7. The Report and Recommendation logically concludes that the written directive that
11 Plaintiff "[m]ail [the complaint] directly to WCC" implicated the box indicating that
12 additional information was required and that Plaintiff was to resubmit his complaint. *Id.*
13 Even if Plaintiff believed the response to be improper or incomplete, Plaintiff could have
14 pursued the grievance further but failed to do so. The Court agrees with the reasoning of
15 the Report and Recommendation in this regard.

16 Third, Plaintiff contends that he could not, as a practical matter, comply with the
17 SCCC grievance coordinator's directive that he "mail" the grievance to WCC because he
18 was housed at WCC at the time he received the returned grievance. Plaintiff also contends
19 that the grievance response was dated 22 days after the filing of the initial grievance. As
20 noted in the Report and Recommendation, "[t]he fact that Plaintiff would not have had to
21 'mail' the grievance to the WCC at the time of the response because he was already there
22 . . . does not change the fact that it was being returned to him for further action on his
23 part." Dkt. 32 at 8. Plaintiff failed to take any further action.

24 Fourth, Plaintiff addresses legal authority cited in the Report and
25 Recommendation. *See* Dkt. 32 at 8. As noted in the Report and Recommendation,
26 Plaintiff's actions do not amount to substantial compliance with grievance procedures,
27 and Plaintiff's discussion of legal authority is of no avail.

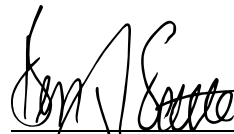
1 Finally, Plaintiff implicitly objects to the Report and Recommendation to the
2 extent that it professes to resolve any factual disputes. *See* Dkt. 32 at 3. The Report and
3 Recommendation “finds it proper to resolve any factual disputes presented by the parties”
4 because Plaintiff had notice and an opportunity to develop a record as to whether
5 Plaintiff’s claims were exhausted. *Id.* The Report and Recommendation was renoted to
6 afford Plaintiff an opportunity to file objections, and the Court is satisfied that Plaintiff
7 has had a full and fair opportunity to investigate and present this issue. *See* Dkt. 36.

8 II. ORDER

9 Therefore, it is hereby

10 **ORDERED** that the Court **ADOPTS** the Report and Recommendation (Dkt. 32);
11 Defendants’ Motion to Dismiss (Dkt. 27) is **GRANTED**; and Plaintiff’s claims are
12 **DISMISSED without prejudice** for failure to exhaust.

13 DATED this 14th day of May, 2008.

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17 BENJAMIN H. SETTLE
18 United States District Judge
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